**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

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| In the Matter of ROGER FARAHMAND, | ) | Case No. S226484 |
| | ) | |
| | ) | State Bar Case No. 13-M-12914 |
| An Applicant for Admission to The State Bar of California | ) | |
| | ) | |
| | ) | |

SUPREME COURT
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Deputy

**THE COMMITTEE OF BAR EXAMINERS' ANSWER TO PETITION FOR REVIEW**

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**THE COMMITTEE OF BAR EXAMINERS' ANSWER TO PETITION FOR REVIEW**

## I. INTRODUCTION

Applicant Roger Arash Farahmand ("Farahmand") seeks review of the State Bar Court Review Department's determination that he does not possess the requisite good moral character for admission to the practice of law in California. (See **Appendix A**, Review Department Opinion.)

Farahmand's course of wrongdoing, dating back to the mid-1990's and continuing through 2011, is serious. His misdeeds include *inter alia*: (1) misrepresentations in his Application for Determination of Moral Character; (2) two Texas State Bar disciplinary actions involving client misconduct – the latter of which resulted in a five year stayed-suspension based also in part on Farahmand's failure to satisfy the professional responsibility program conditions attached to his first discipline; (3) failure to pay employee trust taxes to the IRS, and instead, using those funds to

leverage the profitability of his business and ultimately seek personal financial gain; and (4) two misdemeanor convictions for driving under the influence of alcohol – again, the latter resulting in more severe sanctions, including home detention, supervised probation, and mandatory therapy. Most notably, Farahmand's second criminal probationary period ended less than eight months before he filed his moral character application.

Farahmand's multiple acts of misconduct all occurred while he was licensed to practice law in Texas, and therefore bear directly on his appreciation of the fundamental values of the legal profession; they also demonstrate an inability or unwillingness to obey the law and to respect the rights of others; and when viewed cumulatively, they illustrate a systemic pattern of behavior that has continued even during the course of these moral character proceedings.

In light of Farahmand's transgressions, he has a heavy burden of proving reformation, and he is required to demonstrate rehabilitation and "truly exemplary conduct over an extended period of time." (*In re Glass* (2014) 58 Cal. 4th 500, 521-522 [167 Cal.Rptr.3d 873, 16 P.3d 1199]). He simply has not met this burden.

## II. STATEMENT OF PROCEEDINGS

On April 28, 2011, Farahmand filed an Application for Determination of Moral Character. On March 25, 2013, the Committee of

Bar Examiners (Committee) issued an adverse determination. On May 22, 2013, Farahmand initiated proceedings in the State Bar Court challenging the Committee's decision. Following a four-day trial (held December 2-5, 2013), the hearing judge found that Farahmand had established the requisite good moral character for admission to practice law in California. (Hearing Department Decision, **Appendix B**.)

The Committee appealed that decision to the State Bar Court Review Department, and on March 16, 2015, the Review Department issued its opinion reversing the hearing judge's decision, finding that Farahmand demonstrated insufficient rehabilitation and a lack of truly exemplary conduct over an extended period of time.

Farahmand filed a petition for review with this Court on May 15, 2015, and the Committee herein timely responds.

## III. STATEMENT OF FACTS

Farahmand was born in Tehran, Iran in 1970, and after coming to the United States with his family and returning to Tehran again as an infant, his family ultimately settled in Dallas, Texas in 1979, when he was eight years old. Farahmand attended grade school and college, and eventually law school in Ohio, and became licensed to practice law in Texas in 1995. He maintained a private practice there until April 1999, when he married and moved to the Philippines for a year. In 2000, he returned to Texas and took

over the daily operations of Cedars Hospital, which his wife's family trust owned. Farahmand has since primarily worked in the health care field, working for companies and starting companies that manage hospitals and related facilities.

Basically, Farahmand's prima facie showing of good moral character consists of his education and work history, his entrepreneurial activities in the health care industry, and the testimony of several character witnesses. (**Appendix A**, Review Department Opinion, pp. 2-3.)

However, the facts below underscore the extent of Farahmand's misconduct and his inability to establish rehabilitation.

## A. Farahmand's Attorney Disciplinary History

Farahmand was admitted to the Texas Bar on May 25, 1995. Within six years of becoming a lawyer, he engaged in a course of serious misconduct that resulted in two separate disciplinary actions.

### 1. First Imposition of Discipline

In 1996, just one year after his admission, he failed to competently perform legal services for his client. This resulted in formal disciplinary action by the Texas State Bar in 1998. He was issued a private reprimand and ordered to attend the Texas Professional Enhancement Program (PEP). (**Appendix A**, Review Department Opinion, p. 3.)

### 2. Second Imposition of Discipline

Beginning in 1998 or 1999, Farahmand engaged in two additional acts of client misconduct; he violated his prior disciplinary order by not complying with the PEP requirement; he failed to respond to the Texas State Bar's inquiries; and he failed to maintain a current address with the Texas State Bar. In May 1999, the Texas State Bar filed a complaint against Farahmand, and on May 16, 2001, he was disciplined for a second time, resulting in a five-year stayed suspension. (**Appendix A**, Review Department Opinion, p. 4.)

## B. Criminal Citation And Convictions

### 1. Cashing an Insufficient Check

In or about 1994 or 1995, Farahmand pled guilty to a citation for cashing a check with insufficient funds and paid a court-imposed fine of $50.00. (**Appendix B**, Hearing Department Decision, p. 9.)

### 2. First Driving Under the Influence Conviction

In October 2000, Farahmand was arrested in Texas for assault and driving while intoxicated (DWI). On March 28, 2001, he pled guilty to and was convicted of a misdemeanor DWI and received a 120-day suspended sentence and 24 months of probation, which included completion of a DWI education program, community service, and a fine. (**Appendix A**, Review Department Opinion, p. 6.)

### 3. Second Driving Under the Influence Conviction

In October 2008, Farahmand was again arrested for driving under the influence (DUI) – this time in Colorado. He pled guilty to DUI with a prior, and on August 31, 2009, he was sentenced to 15 months' supervised probation, 30 days' home detention, community service, and a fine. He was also ordered to undergo 68 hours of therapy. (**Appendix A**, Review Department Opinion, p. 6.) Farahmand did not complete all of the terms and conditions of his probation until August 2010 – just eight months before he applied for his moral character determination in California. (**Appendix A**, Review Department Opinion, p. 10.)

## C. Failure To Remit Payroll Taxes To The IRS And Pay Tax Liens

Farahmand returned from the Philippines in 2000 and took over the daily operations of Cedars Hospital in Texas. The hospital was in dire financial condition – it was in substantial debt, in arrears for over a million dollars to the Internal Review Service (IRS), and under a bankruptcy trustee's supervision from 2000 – 2002. (**Appendix A**, Review Department Opinion, p. 5.)

As the general manager of the hospital during this time, Farahmand failed to pay payroll taxes for Cedars' employees. As a result, the Internal Revenue Service (IRS) placed a lien of $873,910.43 against the hospital for 2000, 2001, and 2002 unpaid payroll taxes. (**Appendix A**, Review Department Opinion, p. 5.)

In 2002, Farahmand purchased the hospital for $5 million dollars and Cedars ceased to be under the bankruptcy trustee's supervision. (**Appendix A**, Review Department Opinion, p. 5.)

In March or April 2002, Cedars received a $1 million Medicare payment, but Medicare withdrew it to pay the IRS lien, placing Cedars in a difficult financial position. (**Appendix A**, Review Department Opinion, p. 5.) Due to the hospital's sustained financial problems, Farahmand decided to withhold funds from Cedars' employees' wages, but not remit the payroll taxes to the federal government in 2003 and 2004, instead using the funds to keep the hospital afloat. (**Appendix A**, Review Department Opinion, p. 5.) On October 13, 2004, the IRS filed a second tax lien in the amount of $632,600.50 for those unpaid taxes. (**Appendix A**, Review Department Opinion, p. 5.)

The hospital thereafter negotiated an agreement with the IRS to pay installments of $30,000 per month to satisfy the lien. (**Appendix A**, Review Department Opinion, p. 5.) Farahmand testified that beginning in 2004 or 2005, Cedars Hospital became profitable – generating $1.5 million in profits – but he did not fully satisfy the lien until he sold the business in 2006 for about $15,000,000. (**Appendix A**, Review Department Opinion, pp. 6, 11.)

## D. Failure To Acknowledge And Appreciate Acts Of Wrongdoing

The Review Department found that Farahmand's actions relating to Cedars Hospital were motivated by personal financial gain and not a sense of civic duty to the community (see **Appendix A**, Review Department Opinion, p. 11), and that his continued insistence throughout the proceedings that his actions were justified illustrated a lack of appreciation and understanding of wrongdoing. (**Appendix A**, Review Department Opinion, p. 9.)

The Review Department based its finding on Farahmand's own testimony. When asked if he did anything wrong by failing to pay the payroll taxes, Farahmand stated: "I don't believe I did. I was doing my best to build up the business." (**Appendix A**, Review Department Opinion, p. 6.) Farahmand further testified that he bought the hospital when it was struggling to survive; that his underlying motivation was the hospital's potential profitability (which he viewed as a "goldmine"); and that, in fact, he sold the hospital for more than $10 million over what he paid for it. (**Appendix A**, Review Department Opinion, pp. 6, 11.)

## E. Lack Of Candor On Moral Character Application

Farahmand submitted his Moral Character Application on April 28, 2011. In the application, Farahmand misrepresented information concerning his employment history by claiming he left his position at Sun-Tzu Management for health reasons, when in fact he had been fired.

(**Appendix A**, Review Department Opinion, p. 5.)[1] The Review Department found this to be materially false and dishonest. (**Appendix A**, Review Department Opinion, p. 7.)

## IV. ARGUMENT

### A. Standard Of Review

To be qualified to practice law in this state, a person must be of good moral character. (Bus. & Prof. Code, §§ 6060, subd. (b), 6062, subd. (a)(2).) Good moral character includes "qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the law, and respect for the rights of others and the judicial process." (State Bar Rule 4.40(B); see also Bus. & Prof. Code, § 6068.) "Protection of the public is paramount to the State Bar (see Bus. & Prof. Code, § 6001.1), and a lawyer's good moral character is essential for the protection of clients and for the proper functioning of the judicial system itself. (See *In re Johnson* (1992) 1 Cal.4th 689, 705-706 [4 Cal.Rptr.2d 170, 822 P.2d 1317] (conc. & dis. opn. of Kennard, J).)

When an applicant has presented evidence that is sufficient to

[1] There were other issues with inaccuracies and inattention to detail in Farahmand's application – including the fact that Farahmand was required to amend his application on six separate occasions to supply correct and complete information to the Committee. (**Appendix A**, Hearing Department Decision, p. 7.) The State Bar Court did not consider these additional issues to reflect negatively on his moral character, but it did find that his application was "sloppily prepared", "contain[ed]mistakes and cross-overs", and was submitted "below the level of professional presentation." (**Appendix A**, Hearing Department Decision, p. 7.)

establish a prima facie case of his or her good moral character, the burden shifts to the State Bar to rebut that case with evidence of poor moral character. Once the State Bar has presented the necessary evidence, the burden "falls squarely upon the applicant to demonstrate his [or her] rehabilitation." (*In re Gossage* (2000) 23 Cal.4th 1080, 1096 [99 Cal.Rptr.2d 130, 5 P.3d 186].) The more egregious the misconduct, the stronger the applicant's showing of rehabilitation must be, and in cases where serious or criminal misconduct is involved, positive inferences about the applicant's moral character are more difficult to draw, and negative character inferences are stronger and more reasonable. (*In re Glass, supra,* 58 Cal.4th at p. 521.) In such cases, the applicant must demonstrate that they are "no longer the same person who behaved so poorly in the past," and that they have since "behaved in exemplary fashion over a meaningful period of time." (*Ibid.*)

**B. Taking Into Account The Totality Of Circumstances, Farahmand Has Not Demonstrated A Sustained Period Of Exemplary Conduct Following Years Of Serious Misconduct**

The amount of rehabilitative evidence required to justify admission varies according to the nature and extent of the misconduct at issue. (*In re Menna* (1995) 11 Cal.4th 975, 987 [47 Cal.Rptr.2d 2, 905 P.2d 944].) An applicant's required showing of rehabilitation increases with the severity and scope of the underlying conduct. (*In re Gossage, supra*, 23 Cal.4th at p. 1097 [only "compelling showing of reform" will suffice in light of the

egregiousness of the misconduct].) Where, as here, the misconduct is undisputedly serious in nature (see **Appendix A**, Review Department Opinion, p. 7), the applicant must demonstrate reformation from his prior bad acts and exemplary conduct over a sustained period of time. Given Farahmand's protracted history of moral shortcomings, including prior attorney disciplinary sanctions, criminal convictions, and financial improprieties, he has a heavy burden to carry.

**1. No Sustained Period of Time to Demonstrate Reform**

First and foremost, Farahmand has no sustained period of rehabilitation to evaluate because he submitted his Moral Character Application only two and a half years after his second criminal conviction occurred and just eight months after his criminal probation period ended.

Given his pattern of misconduct beginning in the mid-1990's, this is not enough time to establish sustained exemplary conduct, particularly in light of the fact that "[g]ood conduct generally is expected from someone whose character is under scrutiny" of law enforcement or of the State Bar. (See *In re Glass, supra*, 58 Cal.4th at p. 525; *In re Gossage, supra*, 23 Cal.4th at p. 1099.) Little weight is placed on the fact that a bar applicant did not commit additional crimes or engage in further bad behavior while in prison or while on probation. (*In re Gossage, supra,* 23 Cal.4th at p. 1099; see also *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 939 [264 Cal.Rptr. 361, 782 P.2d 602] ["It is not enough that petitioner kept out

of trouble while being watched on probation; he must affirmatively demonstrate over a prolonged period his sincere regret and rehabilitation."]

Cases authorizing admission on the basis of rehabilitation commonly involve a substantial period of exemplary conduct following the applicant's misdeeds. (See e.g., *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061,1071-1072 [269 Cal.Rptr. 749, 791 P.2d 319][emphasizing a nine-and-a-half year period that elapsed since applicant wrongfully evaded payment of a civil judgment]; *Hall v. Committee of Bar Examiners* (1979) 25 Cal.3d 730, 742[159 Cal.Rptr. 848, 602 P.2d 768] [stressing importance of six-year period in which no complaints were lodged against applicant's employment business after his business license was temporarily suspended by an administrative agency]; *In re Menna, supra,* 11 Cal.4th at p. 989 [holding that applicant's five and one-half years of unsupervised good conduct not a sufficient period of time to demonstrate genuine reform considering prior misconduct].)

In addition, the Review Department outlined instances of dishonesty and disingenuousness persisting throughout his moral character proceedings, including the material misrepresentation he made on his Moral Character Application and his lack of understanding of wrongdoing regarding his failure to remit payroll taxes for the employees at Cedars Hospital. The recent transgressions believe any claim of sustained rehabilitation.

Here, plain and simple – not enough time has elapsed since his last criminal conviction and probationary period, and Farahmand does not have the necessary period of abated misbehavior and truly exemplary conduct to provide context for any showing of rehabilitation.

### 2. Failure to Establish the High Level of Rehabilitation Required for Admission to Practice Law in California

Farahmand takes great lengths in his Petition to distinguish his acts from those of Stephen Glass. (See Petition, pp. 11-13.) No one is claiming that Farahmand's misconduct is on par with that of Stephen Glass, although when viewed cumulatively, there is no question that Farahmand's conduct is of a various serious nature. In *In re Glass*, this Court simply reaffirmed the sliding scale of proof required of applicants to establish their rehabilitation from past misdeeds. "'[T]he more serious the misconduct and the bad character evidence, the stronger the applicant's showing of rehabilitation must be.'" (*Glass, supra,* 58 Cal.4th at p. 520, citing *In re Gossage, supra,* 23 Cal. 4th at p. 1096.) An applicant must show that they have since "behaved in exemplary fashion over a meaningful period of time."

The Hearing Department in this case found that Farahmand had established rehabilitation, but the hearing judge focused on whether there was a "risk of [Farahmand] repeating his misconduct" and determined the risk here was remote. The judge was convinced that Farahmand had

learned from his past transgressions and now understood and respected the ethical duties that an attorney is required to possess. (**Appendix A**, Review Department Opinion, p. 6; **Appendix B**, Hearing Department Decision, p. 16.) However, as duly noted by the Review Department, in reaching this decision about Farahmand's moral character, the hearing judge employed the wrong test by considering his subjective state of mind of the likelihood of recidivism. (**Appendix A**, Review Department Opinion, p. 6.) The correct analysis, as discussed by this Court in *In re Glass*, is whether he has shown through objective measures – truly exemplary conduct over an extended period of time.

Here, in addition to Farahmand recent acts of dishonesty and disingenuousness on his moral character application and in his moral character proceedings, Farahmand has been disciplined twice by the Texas State Bar for professional misconduct, he has two criminal DUI convictions and one criminal citation involving financial impropriety, and he demonstrated a severe breach of fiduciary duties by failing to remit payroll taxes to the IRS – conduct that is tantamount to misappropriation of entrusted funds.

Farahmand's multiple acts of misconduct are particularly reprehensible because they all took place while he was a licensed attorney in Texas, when the importance of professional ethics, honesty, and respect for the laws and others should have had significance for him.

In light of the record, Farahmand must demonstrate a high level of reform. However, Farahmand provided modest rehabilitation evidence at best – 13 character witnesses who testified on his behalf, and evidence of his for-profit entrepreneurial efforts in the health care industry. As duly noted by the Review Department, character witnesses "will not suffice by itself to establish rehabilitation" (see **Appendix A**, Review Department Opinion, p. 11, citing *In re Glass, supra,* 58 Cal.4th at p. 525) and, although his health care initiatives are admirable, they are diminished by the fact that they are motivated by personal financial gain. (See **Appendix A**, Review Department Opinion, p. 11-12.)

Farahmand's showing is insufficient to meet his burden of rehabilitation in this case and to hold him out with confidence as someone who should be admitted to practice law in this state.

### C. Farahmand's Claimed Evidentiary Issues Lack Merit

In his Petition, Farahmand attempts to discredit one of the Committee's arguments by arguing several inapt evidentiary issues.

First, Farahmand claims that the fact that the original Moral Character Application was not fully introduced at trial dismisses any claims that he made misrepresentations in the application. (See Petition, p. 14.) The hearing judge, however, indicated to the contrary – that much of the Application was introduced into evidence (it was just not intact – leading to some confusion.) (**Appendix B**, Hearing Department Decision, p. 7.)

More importantly, there is no dispute that there was substantial testimonial evidence during the trial regarding the Application, and both the hearing judge and the Review Department found that Farahmand admitted that he had been fired from his job at Sun-Tzu when he represented in his Moral Character Application that he had left for health reasons. (**Appendix A**, Review Department Opinion, p. 5; **Appendix B**, Hearing Department Decision, p. 8.)

Next, Farahmand claims that the evidentiary record does not support a finding that he engaged in serious acts of moral turpitude by not remitting payroll taxes to the IRS. Again, he tries to argue that his transgressions were not as bad as those of Stephen Glass. (See Petition, p. 17.) And again, no one is comparing him to Stephen Glass, and nowhere in the Review Department Opinion does it mention that this was considered an act of moral turpitude. Nonetheless, Farahmand actions are serious and demonstrate a lack of good moral character.

There is no dispute that Farahmand was required to remit employee trust taxes to the IRS. 26 U.S.C. section 6672 requires employers to collect, truthfully account for, and pay employee payroll taxes.[2] An employer who

[2] 26 U.S.C. section 6672(a) provides: "Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by

fails to pay taxes withheld from its employees' wages is, of course, liable for the taxes which should have been paid (see 26 U.S.C. §§ 3102(b) and 3403), and is subject to penalties. (*Slodov v. U. S.* (1978) 436 U.S. 238, 243 [98 S.Ct. 1778, 56 L.Ed.2d 251].)

Payroll taxes withheld from employees' wages are considered "trust funds." (26 U.S.C. § 7512(b).)[3] Failure to remit these taxes is grounds for the federal government to attempt to collect and remedy the situation through a variety of means, including the full range of collection methods available for the collection of taxes generally (see 26 U.S.C. §§ 6231, 6331 – 6344); imposition of civil penalties (see 26 U.S.C. §§ 6656, 6672); and criminal prosecution. (See 26 U.S.C. §§ 7202, 7215; *Slodov, supra,* at p. 243; see also e.g. Cal. Labor Code § 227 [making it a crime under California law].)

The Hearing Department found that Farahmand did nothing wrong

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law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted and paid over...."

[3] 26 U.S.C. section 7512(b) provides that: "Any person who is required to collect, account for, and pay over any tax imposed by subtitle C [Employment Taxes] or chapter 33, if notice has been delivered to such person in accordance with subsection (a), shall collect the taxes imposed by subtitle C or chapter 33 which become collectible after delivery of such notice, shall (not later than the end of the second banking day after any amount of such taxes is collected) deposit such amount in a separate account in a bank (as defined in [26 U.S.C. § 581]), and shall keep the amount of such taxes in such account until payment over to the United States. **Any such account shall be designated as a special fund in trust for the United States, payable to the United States by such person as trustee.** [Emphasis added]."

by failing to pay employee payroll taxes:

> [T]he court was at first troubled by the IRS tax liens filed against [Farahmand] while managing Cedars Hospital. However, the court can find no acts of intentional misconduct in his failure to promptly pay the tax liens. [Farahmand] was faced with two options: pay the liens and close the hospital or not pay the liens and keep the hospital open.... [Farahmand]'s keeping the hospital open was a great achievement.

(**Appendix B**, Hearing Department Decision, p. 16.)

The hearing judge's logic is flawed, however, and contrary to established precedent. Courts have specifically rejected the argument that an employer should not be liable for penalties under section 6672 because they made a reasonable or shrewd business decision to withhold and not pay over employee trust taxes:

> [T]he Ninth Circuit has explicitly rejected ... 'reasonable cause' arguments in section 6672 cases. As the courts have repeated countless times, '[n]o bad motive need be proved, and conduct motivated by a reasonable cause, *such as meeting payroll*, may be "willful."' [Citations omitted]. Additionally, the Ninth Circuit has held that [such] excuses, 'simply amount [] to [allegations] of 'reasonable cause' or 'justifiable excuse,' a defense that has been specifically rejected by this court.' *Sorenson v. United* States, 521 F.2d 325, 329 (9th Cir. 1975).

(*Baimbridge v. U.S.* (2004) 335 F.Supp.2d 1084, 1091.)

Farahmand made a purposeful choice to withhold taxes in order to keep his for-profit business afloat. As recognized by the Review Department, this is a willful violation of law that demonstrates poor moral character. (**See Appendix A**, Review Department Opinion, pp. 8-9, citing

*In the Matter of Morales* (1983) 35 Cal.3d 1, 6 [196 Cal.Rptr. 353, 671 P.2d 857].)

*In the Matter of Morales*, this Court held that it was disciplinable misconduct to not pay employee payroll taxes:

> Petitioner, having paid his employees only their 'net' wages, appears to have misused funds held in trust for those employees. Petitioner had the duty, as an employer and a trustee, to withhold proper payroll deductions and to pay them to the state. (Unemp. & Ins. Code, sections 986, 211.5). The monies withheld belonged to the employees, not to petitioner or his corporation. By failing to maintain the withheld funds in trust for his employees, petitioner in essence commingled those funds with his own and misappropriated them for his own benefit. We find no justification for petitioner's misconduct. His reasons for failing to pay the taxes differ little in kind from those confronting many a harried taxpayer, who would not be relieved thereby from such obligation.
>
> Petitioner made an illegal business decision concerning the allocation of available funds between competing obligations.... Further, petitioner's decision to allocate his available funds to other creditors, rather than to the state, was clearly willful. We have held the term 'willful' does not require evil intent, but it implies that the person knows what he is doing, intends to do what he is doing, and is a free agent...

(*In the Matter of Morales*, *supra*, at pp. 5-6.)

Although the majority of the Court in *Morales* never reached the issue, in her concurring opinion, Chief Justice Bird reasoned that Morales' misconduct involved dishonesty and, therefore, moral turpitude:

> Each of the 27 crimes of which petitioner was convicted involved his failure to pay taxes and unemployment insurance contributions with funds withheld from employee paychecks for that purpose. Petitioner committed these crimes without the knowledge or consent of his employees. This wilful and dishonest misconduct which prejudiced the rights of his employees meets the moral turpitude

standard defined in *Fahey* [*In re Fahey* (1973) 8 Cal. 3d 842]. (*In the Matter of Morales*, *supra*, at p. 9 (conc. opn. of Bird, J).)

Here, although never relied upon by the Review Department, the Committee, in its briefing before the Review Department, made the sound argument that Farahmand's misconduct similarly involved acts of moral turpitude. His failure to pay employee trust taxes were repeated and willful violations of his professional and fiduciary obligations to his employees. He violated the duty to hold these taxes in trust, and his use of the money to make his business more profitable equates to a misappropriation of entrusted funds. He engaged in this course of conduct while holding his license to practice law in Texas. This is virtually indistinguishable from an attorney's intentional misappropriation of entrusted funds and his taking those funds for his personal use. (See *Edwards vs. State Bar* (1990) 52 Cal. 3d 28, 37-38 [276 Cal.Rptr. 153, 801 P.2d 396], *McKnight vs. State Bar* (1991) 53 Cal. 3d 1025, 1034-1035 [281 Cal.Rptr. 766, 810 P.2d 998].) Both involve moral turpitude, dishonesty, or corruption.

Regardless of whether his failure to remit payroll taxes involved moral turpitude or not – it is a serious and intentional violation of the law and his fiduciary duties. This transgression, along with his two Texas attorney disciplinary actions, his criminal convictions, and his lack of candor and acknowledgment of wrong-doing unquestionably establish

severe moral shortcomings that warrant an adverse moral character determination.

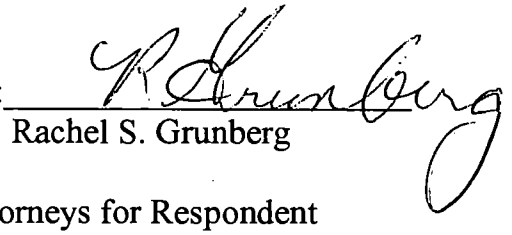
## V. CONCLUSION

Farahmand has committed multiple and egregious acts of misconduct and failed to demonstrate the requisite rehabilitation necessary for attorney licensure in this state. In light of the State Bar's paramount duty to protect the public against persons unfit to practice law, the Committee respectfully requests that this Court deny his Petition for Review and decline to certify him for admission to the bar.

Dated: June 3, 2015

Respectfully submitted,

LAWRENCE C. YEE
RICHARD J. ZANASSI
RACHEL S. GRUNBERG

By: 
Rachel S. Grunberg

Attorneys for Respondent
The Committee of Bar Examiners of
The State Bar of California

**WORD COUNT CERTIFICATE PURSUANT TO CALIFORNIA RULE OF COURT 8.520(c)(1)**

Pursuant to rule 8.520(c) of the California Rules of Court, I hereby certify that this brief contains 4722 words. I have relied on the word count of the computer program used to prepare the brief.

Dated: June 3, 2015

Rachel S. Grunberg

**PROOF OF SERVICE BY MAIL**

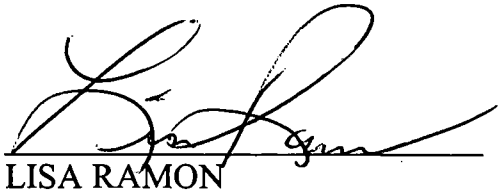
I, Lisa Ramon, hereby declare that I am over the age of eighteen years and am not a party to the within above-entitled action, that I am employed in the City and County of San Francisco, that my business address is The State Bar of California, 180 Howard Street, San Francisco, California 94105.

On June 3, 2015, I served three copies of **THE COMMITTEE OF BAR EXAMINERS' ANSWER TO PETITION FOR REVIEW (Cal. Rules of Court, rule 9.13(a))** by overnight courier on the party listed as follows:

Kevin Gerry
The Law Offices of Kevin Gerry
A Professional Corporation
433 North Camden Drive, Suite 400
Beverly Hills, CA 90210

***Attorneys for Petitioner Roger Farahmand***

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



LISA RAMON

# APPENDIX A

CONFIDENTIAL MATTER – NOT DESIGNATED FOR PUBLICATION

FILED

MAR 16 2015

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

**STATE BAR COURT OF CALIFORNIA**

**REVIEW DEPARTMENT**

| | | |
|---|---|---|
| In the Matter of | ) | Case No. 13-M-12914 |
| | ) | |
| ROGER ARASH FARAHMAND, | ) | OPINION |
| | ) | |
| Applicant for Admission. | ) | |
| | ) | |

The Committee of Bar Examiners of the State Bar (Committee) appeals a hearing judge's determination that Roger Arash Farahmand, a member of the Texas State Bar, possesses the good moral character required for admission to practice law in California. The Committee argues that Farahmand lacks the requisite good moral character because he has two prior records of discipline in Texas, made misrepresentations in his moral character application, failed to pay employee payroll taxes, and had two alcohol-related driving convictions. In response, Farahmand contends that he proved that he is rehabilitated following his wrongdoing. After independently reviewing the record (Cal. Rules of Court, rule 9.12), we find that Farahmand has failed to establish his rehabilitation and failed to show truly exemplary conduct over an extended period of time.

## I. PROCEDURAL HISTORY

Farahmand filed a Confidential Application and Questionnaire for Determination of Moral Character in April 2011. The Committee issued an adverse moral character determination in March 2013. Following a four-day trial in December 2013, a hearing judge found Farahmand qualified for admission to practice law in this state.

## II. MORAL CHARACTER PROCEEDINGS

The California Supreme Court "may admit to the practice of law any applicant whose qualifications have been certified to it by the Committee of Bar Examiners . . . (Bus. & Prof. Code, § 6064.)" (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1067.) To qualify to practice law in this state, a person must be of good moral character. (Bus. & Prof. Code, §§ 6060, subd. (b), 6062, subd. (a)(2).) "Good moral character includes 'qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the law, and respect for the rights of others and the judicial process.' [Citation.]" (*In re Glass* (2014) 58 Cal.4th 500, 520 (*Glass*).)

The procedures in moral character hearings are well-established. The applicant must first present a prima facie case showing good moral character. (*In re Menna* (1995) 11 Cal.4th 975, 984.) The burden then shifts to the Committee to rebut that showing with evidence of poor moral character. (*Glass, supra,* 58 Cal.4th at p. 520.) Once the Committee rebuts the applicant's showing, "the burden 'falls squarely upon the applicant to demonstrate his [or her] rehabilitation.' [Citation.]" (*Ibid.*)

## III. FACTUAL AND LEGAL CONCLUSIONS

### A. Farahmand Met His Prima Facie Showing of Good Moral Character

Farahmand moved from Iran to the United States when he was eight years old. His family settled in Dallas, Texas, where he excelled academically. He attended the University of Wisconsin in Madison when he was 16, joined a fraternity, and became the social chairman. Farahmand began to focus on his social life to the neglect of his studies. His resulting poor academic performance forced him to leave the university for one semester in 1990.

Farahmand reapplied himself to his academics at a local junior college and returned to the University of Wisconsin after May 1990. With no further academic problems, he graduated in

December 1991, and later attended the University of Dayton School of Law. After graduating in 1995, Farahmand was admitted to the practice of law in Texas in May 1995. He then earned an advanced degree in taxation from the University of Denver College of Law in Colorado.

Once he was a member of the Texas State Bar, Farahmand worked for an attorney in his general practice. When that attorney died suddenly, Farahmand and a former law school classmate formed a partnership. Farahmand maintained his private practice until he relocated to the Philippines in 1999, and transitioned into the healthcare field. When he returned to Texas in 2000, he took over the daily operations of Cedars Hospital, which his wife's family trust owned.

In 2007, Farahmand co-created Enterhealth, an online program to assist individuals with alcohol and drug addictions. His programs were sold to Employee Assistance Programs. Additionally, Enterhealth opened drug and alcohol rehabilitation programs in Texas. In 2010, Farahmand sold the majority of his shares in the company for $2.3 million, but retained five percent ownership.

**B. The Committee's Rebuttal Evidence**

**1. Farahmand's 1998 and 2001 Texas Disciplines**

In 1998, the State Bar of Texas disciplined Farahmand for misconduct occurring in 1996 and 1997. Mike Ghani hired Farahmand to represent him in a lawsuit that another attorney filed on Ghani's behalf. Farahmand had a scheduling conflict and missed Ghani's March 19, 1996 trial date. The trial court "rendered" a judgment against Ghani. Farahmand filed another lawsuit for Ghani in the same matter, but did not conduct any discovery. Since he did not appear for the March 12, 1997 trial date, the court dismissed the case for lack of prosecution. Ghani sued Farahmand and his law partner and received a judgment against them, which Farahmand paid. The State Bar of Texas gave Farahmand a private reprimand and ordered him to attend Professional Enhancement Program (PEP) sessions.

In 2001, the State Bar of Texas disciplined Farahmand a second time for failing to comply with the PEP condition of his 1998 private reprimand; failing to update his address with the Texas State Bar after he moved to the Philippines in 1999; and misconduct in two client matters. In the first matter, Farahmand failed to file a lawsuit on behalf of his client, Dr. Kamran Algilani, and in the second, he settled his client Maritza McCoomis's bodily injury claim but failed to notify her when he received the settlement check. Farahmand never responded to the Texas State Bar's inquiries into either matter. He received a five-year "probated" suspension for his misconduct.[1] Farahmand explained that his misconduct resulted from his move to the Philippines. Before he relocated, he transferred both matters to his law partner, but never informed his clients of his move or that he transferred their files.

**2. Inaccuracies in Moral Character Application**

Farahmand's moral character application contained three inaccuracies, two of which involved his explanations of his Texas discipline. In the first misrepresentation, Farahmand described his misconduct in the Ghani matter, which led to his 1998 discipline, by merely stating, "I missed a court date." He did not disclose that he missed the trial dates in two different lawsuits, which clearly prejudiced his client. The hearing judge found that this inaccuracy did not adversely affect Farahmand's moral character because an attachment to his application disclosed that he missed both trial dates.

The second inaccuracy concerned Farahmand's material misrepresentation about his 2001 Texas discipline (involving the Algilani and McCoomis matters) that the final disposition was "no misconduct." This was untrue because, in fact, the Texas State Bar disciplined him. Again, the hearing judge did not find this misrepresentation reflected poorly on Farahmand's

[1] This suspension did not involve any actual suspension.

moral character because "elsewhere in his application, it is noted that Applicant received a five-year fully probated sanction."

The final discrepancy in Farahmand's application concerned his employment history. He stated that he left his position at Sun-Tzu Management because of his "Health," which contradicted his own testimony during the moral character hearing. Farahmand testified that he became stressed after Sun-Tzu relieved him of his general management duties in March 1999, which led to a two-week hospitalization. However, he testified he was actually "fired" in September 1999 because his management philosophy differed from the company's shareholders.

**3. Failure to Pay Payroll Taxes**

Farahmand assumed responsibility for the daily operations of Cedars Hospital in Texas when he returned from the Philippines in March 2000. He purchased the hospital for about $5,000,000 in 2002.

Prior to the purchase, the hospital was under a bankruptcy trustee's supervision from 2000 through 2002. During that time, Farahmand failed to pay payroll taxes for Cedars's employees. As a result, the Internal Revenue Service (IRS) placed a lien of $873,910.43 against the hospital for 2000, 2001, and 2002 unpaid payroll taxes. In March or April 2002, Cedars received a $1 million Medicare payment, but Medicare withdrew it to pay the IRS lien, placing Cedars in a difficult financial position. Due to the hospital's financial problems, Farahmand withheld funds from Cedars's employees' wages, but failed to pay payroll taxes in 2003 and 2004. The IRS filed a $632,600.50 tax lien for those unpaid payroll taxes. Cedars was no longer under the bankruptcy trustee's supervision when Farahmand decided not to pay the IRS in 2003 and 2004.

The hospital negotiated an agreement with the IRS to pay $30,000 per month to satisfy the $632,600.50 tax lien. Farahmand testified that the hospital generated $1.5 million in profits

beginning in 2004 or 2005, but he did not fully satisfy the IRS lien until he sold Cedars in 2006. When asked if he did anything wrong by failing to pay the payroll taxes, he stated, "I don't believe I did. I was doing my best to build up the business." He also explained, "It was survival, in the sense that, you know, we wouldn't have survived if the hospital had been shut down."

**4. Driving Under the Influence Convictions**

In October 2000, Farahmand was arrested in Texas for assault and driving while intoxicated (DWI). The assault charge stemmed from an incident between Farahmand and security personnel at a bar earlier in the evening. When he drove away after the episode, he was stopped for a possible DWI. He pled guilty to a misdemeanor DWI charge, and received a 120-day suspended sentence and 24 months of probation, which included completion of a DWI education program, community service, and a fine. The judgment was entered March 28, 2001.

In October 2008, Farahmand was arrested for driving under the influence (DUI) in Colorado; he pled guilty to a DUI with a prior. In August 2009, he was sentenced to 15 months' supervised probation, 30 days' home detention, community service, and a fine. He was also ordered to undergo 68 hours of therapy. Farahmand completed all of the terms and conditions of his probation in August 2010.

## IV. NO SUSTAINED PERIOD OF EXEMPLARY CONDUCT AND INSUFFICIENT SHOWING OF REHABILITATION

In finding Farahmand established the requisite good moral character to practice law, the hearing judge stated, "the risk of Applicant repeating his misconduct is remote." The judge was convinced that Farahmand learned from his past transgressions and understands and respects the ethical duties an attorney is required to possess. In reaching his decision about Farahmand's moral character, the hearing judge employed the wrong test by considering the likelihood of Farahmand repeating his misconduct. The correct analysis requires consideration of whether he has shown truly exemplary conduct over an extended period.

The Committee argues that Farahmand is required, pursuant to *Glass, supra,* 58 Cal.4th 500, to make "a compelling showing of rehabilitation and truly exemplary conduct over an extended period" for State Bar admission. (*Id.* at p. 522.) The amount of evidence of rehabilitation required to justify admission varies according to the seriousness of the misconduct at issue. (*Kwasnik, supra,* 50 Cal.3d at p. 1086 (dis. opn. of Lucas, C. J.).) Farahmand's misconduct was not as egregious as in *Glass*; therefore, "compelling" rehabilitation is not required. However, the seriousness of his misconduct and its direct relationship to his fitness to practice law warrant substantial evidence of rehabilitation. We find that Farahmand has not established a lengthy period of truly exemplary conduct or the necessary rehabilitation that "would suffice to demonstrate his fitness to practice law." (*Glass, supra,* 58 Cal.4th at p. 522.)

**A. No Truly Exemplary Conduct Over an Extended Period**

" 'Cases authorizing admission on the basis of rehabilitation commonly involve a substantial period of *exemplary* conduct following the applicant's misdeeds.' [Citation.]" (*In re Glass, supra,* 58 Cal.4th at p. 520.) Here, Farahmand's acts of wrongdoing demonstrate the absence of a sustained period of exemplary behavior.

**1. Material Misrepresentations in Application**

The Committee argues that Farahmand's moral character application contains material misrepresentations about his Texas disciplines and his reason for leaving Sun-Tzu. We agree that it was materially false for Farahmand to state that he left Sun-Tzu for health reasons when the company actually fired him. His explanation was dishonest. Honesty is absolutely fundamental in the practice of law; without it, " ' " 'the profession is worse than valueless in the place it holds in the administration of justice.' " ' " (*In re Menna, supra,* 11 Cal.4th at p. 989.) "[M]anifest dishonesty . . . provide[s] a reasonable basis for the conclusion that the applicant or attorney cannot be relied upon to fulfill the moral obligations incumbent upon members of the

legal profession." (*Hallinan v. Committee of Bar Examiners* (1966) 65 Cal.2d 447, 471.) This material misrepresentation demonstrates that Farahmand has "not acted with the 'high degree of frankness and truthfulness' and the 'high standard of integrity' required by this process." (*In re Gossage* (2000) 23 Cal.4th 1080, 1102.)

We do not find that Farahmand misrepresented the circumstances surrounding his 1998 Texas discipline. His description was truthful, albeit incomplete. Although he did falsely represent the result of his 2001 Texas discipline, the record lacks evidence that this misrepresentation or the incomplete disclosure about his 1998 discipline was done with the intent to deceive. "Since the omitted information was contained in other parts of the [application] and there was no intent to deceive or conceal, we conclude that the inaccuracies . . . do not reflect adversely on [Farahmand's] rehabilitation and present moral fitness." (*In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546, 555.)

**2. Intentional Failure to Pay Payroll Taxes**

The hearing judge found "no acts of intentional misconduct in [Farahmand's] failure to promptly pay the tax liens" because he did not ignore them and his ability to keep "the hospital open was a great achievement." The Committee argues that the hearing judge's reasoning is flawed because Farahmand committed misconduct by willfully failing to pay taxes. We agree.

Farahmand's failure to pay $632,600.50 in payroll taxes for 2003 and 2004 undermines his claim of rehabilitation. Taxes withheld from employees' wages are considered "trust funds" that must be kept in a special trust fund for the United States until payment is made. (26 U.S.C. § 7512(b).) Civil penalties are imposed for failure to pay the taxes. (26 U.S.C. §§ 6656, 6672.) Additionally, it is a crime to willfully fail to pay these taxes. (26 U.S.C. §§ 7202, 7215.)

Farahmand misused the funds held in trust by paying his employees only their net wages. (*In re Morales* (1983) 35 Cal.3d 1, 6.) He had "the duty, as an employer and a trustee, to

withhold the proper payroll deductions and to pay them to the [IRS]." (*Ibid.*) Farahmand "made an illegal business decision concerning the allocation of available funds between competing obligations." (*Ibid.*) "His reasons for failing to pay the taxes differ little in kind or degree from those confronting many a harried taxpayer, who would not be relieved thereby from such obligation." (*Ibid.*) This misconduct demonstrates a willful violation of federal law and demonstrates a lack of good moral character.[2]

Farahmand's claim that his misconduct was justified because he was trying to prevent the hospital's closure illustrates his lack of understanding that his conduct was wrong. As the Supreme Court observed, "[f]ully acknowledging the wrongfulness [of past misconduct] is an essential step towards rehabilitation. [Citations.]" (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Contending that he has done nothing wrong, he demonstrates his lack of rehabilitation.

We reject Farahmand's argument that the Committee is judicially estopped from arguing that it was improper for him to willfully fail to pay Cedars's employee payroll taxes because the Committee conceded "it was an achievement" for Farahmand to turn Cedars around when it had "massive tax debt and massive liabilities." It described that accomplishment as "a very big achievement for any person" and "a feather in his cap." The Committee's compliments did not absolve Farahmand for failing to pay the IRS. Instead, it argued that, "He didn't pay when he was able, a massive tax debt." Rather than "paying that tax debt . . . [h]e was generous with his friends. But he didn't pay his obligations. Mr. Farahmand made a business decision not to pay taxes." The Committee is not estopped from making its arguments about Farahmand's failure to

[2] The Committee conceded that no negative moral character inference can be drawn from Farahmand's failure to pay the prior $873,910.43 tax lien because the bankruptcy trustee closely controlled and supervised his daily operation of the hospital during that time.

pay the payroll taxes since, despite acknowledging his accomplishments, it continuously took the position that his conduct was improper.

**3. Recent DUI Conviction**

During these proceedings, Farahmand provided a November 14, 2013 alcohol and substance abuse report from a psychiatrist named John M. Talmadge, M.D. Dr. Talmadge evaluated Farahmand for two hours and determined that he "does not have a present problem related to alcohol, drugs, addictive chemicals, or substance abuse of any kind." He opined that Farahmand's two DUI convictions occurred several years apart, and therefore showed "no pattern of ongoing misuse of alcohol or other substances in his history."[3]

The hearing judge acknowledged that Farahmand's 2009 DUI conviction "occurred only five years ago," but his "subsequent court-ordered therapy sessions played a significant role in helping him change his life." The judge also found credible Dr. Talmadge's expert opinion that Farahmand has no problems with alcohol.

However, we agree with the Committee that even with this medical evaluation, not enough time has elapsed to demonstrate rehabilitation after his conviction. Farahmand committed his second DUI just two and one-half years before submitting his moral character application in April 2011. This is insufficient to demonstrate a period of exemplary conduct, particularly since his criminal probation on his second DUI ended only eight months before he filed his application. (*In re Menna, supra,* 11 Cal.4th 975, 989 ["five and one-half years of unsupervised good conduct is not a sufficient period of time to demonstrate genuine reform"]; compare *Kwasnik v. State Bar, supra,* 50 Cal.3d 1061, 1071-1072 [seven- or eight-year period sufficient to show rehabilitation after applicant wrongfully evaded payment of civil judgment]; *Hall v. Committee of Bar Examiners* (1979) 25 Cal.3d 730, 742 [extended period of exemplary

[3] The "two DUI convictions" referenced by Dr. Talmadge are Farahmand's Texas DWI conviction in 2001 and his Colorado DUI conviction in 2009.

conduct found where no complaints lodged against applicant's employment business for six years after his business license was temporarily suspended by administrative agency].)

**B. Insufficient Showing of Rehabilitation**

Farahmand presented character witnesses and his healthcare industry accomplishments to establish he is now fit to practice law. The 13 witnesses who testified on Farahmand's behalf included doctors, business owners, financial institution presidents or vice-presidents, and five attorneys. All witnesses described Farahmand as honest, truthful, ethical, and a man with high integrity. He was also considered very generous with his time and money. Almost all of the witnesses knew the reasons the Committee opposed his admission to practice law, but that did not change their positive views of him. The attorneys and other witnesses maintained that they would not hesitate to refer people to Farahmand for legal representation.

However, character witnesses' testimony "will not suffice by itself to establish rehabilitation. [Citation.]" (*Glass, supra,* 58 Cal.4th at p. 525.) Moreover, Farahmand's success in the healthcare industry is commendable, but does not establish he is rehabilitated after his misdeeds. " '[T]ruly exemplary' conduct ordinarily includes service to the community. [Citation.]" (*Id.* at p. 520.) Farahmand bought Cedars Hospital for about $5,000,000 when it was struggling to survive. He made it profitable and sold it for about $15,000,000. However, he did not purchase and manage the hospital out of a sense of civic duty to the community. Instead, he testified he was motivated by the hospital's potential as a "goldmine" and thought "it could have been doing very, very well" financially.

Farahmand's creation of Enterhealth online programs and addiction treatment centers in 2007 is also admirable, but his rehabilitation showing is undermined by committing a DUI one year after he started Enterhealth. Additionally, he benefitted financially by selling the company for about $2.3 million after only three years of involvement. Often, rehabilitation through

community service is shown by unpaid volunteer work. (See *In the Matter of Salyer* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 816, 824 [extensive work with Little League for six years and weekly youth discussions for three years considered rehabilitating]; *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 317 [rehabilitation shown by full day of pro bono work every week for four years]; *In re Andreani* (1939) 14 Cal.2d 736, 748 [rehabilitation shown by active participation in civic and public projects for considerable portion of six years].)

In light of Farahmand's misconduct, we find that the evidence of his rehabilitation and truly exemplary conduct over an extended period of time is insufficient.

## V. CONCLUSION

Farahmand has failed to establish that he possesses good moral character. We cannot hold him out to our Supreme Court with confidence as one who should be admitted to practice law. We reverse the hearing judge's decision.

HONN, J.

WE CONCUR:

PURCELL, P. J.

EPSTEIN, J.

# APPENDIX B

FILED

FEB 04 2014

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

# CONFIDENTIAL

**STATE BAR COURT OF CALIFORNIA**

**HEARING DEPARTMENT - LOS ANGELES**

| | | |
|---|---|---|
| In the Matter of | ) | Case No.: **13-M-12914-RAP** |
| | ) | |
| **ROGER ARASH FARAHMAND,** | ) | **DECISION** |
| | ) | |
| Applicant for Admission. | ) | |
| | ) | |

## Introduction[1]

After receiving an adverse moral character determination from the Committee of Bar Examiners of the State Bar of California (Committee), **Roger Arash Farahmand** (Applicant) seeks a de novo determination of his moral character from the State Bar Court. (Rules Proc. of State Bar, rule 5.460, et seq.; Rules of the State Bar, Title 4, Div. 1, rule 4.47.) As set forth below, the court finds that Applicant has established that he currently possesses the requisite good moral character for admission to the practice of law in this state. (Bus. & Prof. Code section 6060, subd. (b); Rules of the State Bar, Title 4, Div. 1, rule 4.40(A).)

Applicant was represented by attorney Michael Gerner. The Committee was represented by Senior Trial Counsel Anthony Garcia and Deputy Trial Counsel Ross Viselman of the Office of the Chief Trial Counsel of the State Bar of California.

## Significant Procedural History

On April 28, 2011, Applicant submitted an application for determination of moral character to the Committee (application). On March 25, 2013, the Committee issued an adverse

[1] All statutory references are to the Business and Professions Code, unless otherwise indicated.

moral character determination. Thereafter, on May 22, 2013, Applicant initiated the present moral character proceeding by filing an application for a moral character proceeding and hearing in the State Bar Court (application for a moral character proceeding). (Rules Proc. of State Bar, rule 5.461.)

On September 30, 2013, the Committee filed a response to the application for a moral character proceeding. (Rules Proc. of State Bar, rule 5.462(B).) On November 13, 2013, the Committee filed a supplemental response.

Trial in this matter was held December 2-5, 2013. The matter was submitted for decision immediately thereafter.

**State Bar Court Moral Character Proceedings**

Attorneys must possess good moral character. (Section 6060, subd. (b); Rules of the State Bar, Title 4, Div. 1, rule 4.40.) In that regard, it is important to note that the Supreme Court "may properly refuse to admit an applicant to practice law upon proof that would not justify an order of disbarment." (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 938.)

In cases such as this, the court is not called upon to review the adverse moral character determination of the Committee, but address, de novo, whether the applicant currently possesses the requisite good moral character for admission to practice as an attorney in California. The term "good moral character" includes qualities of honesty, candor, fairness, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the laws of the state and the nation, and respect for the rights of others and for the judicial process. (Rules of the State Bar, Title 4, Div. 1, rule 4.40.)

An applicant for admission has the burden of proving good moral character. (*In re Gossage* (2000) 23 Cal.4th 1080, 1095.) Notably, even though it is the applicant who bears the

burden of proof, all reasonable doubts are ordinarily resolved in favor of the applicant. (*Seide v. Committee of Bar Examiners, supra,* 49 Cal.3d 933, 937.) The applicant's initial burden is to furnish sufficient evidence to make a prima facie showing of good moral character. (*In re Menna* (1995) 11 Cal.4th 975, 984.) It is relatively easy for an applicant to establish a prima facie case of good moral character. (See, e.g., *Hall v. Committee of Bar Examiners* (1979) 25 Cal.3d 730, 734-735 [applicant's testimony and that of two other witnesses established a prima facie case].) Upon satisfying that burden, the Committee may seek to rebut the initial showing with evidence of bad moral character. (*Id.* at p. 734.)

However, rebuttal evidence by the Committee in admissions cases must be established by clear and convincing evidence. (*In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318, 327.) Of course, an applicant may discredit the Committee's evidence to prevent it from carrying its burden to rebut, by clear and convincing evidence, his or her prima facie showing. (Cf. *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894, 899.)

If the Committee is successful in rebutting an applicant's prima facie showing, the applicant must then establish his or her rehabilitation from the misconduct or other bad character evidence that the Committee established to rebut the initial showing. (*In re Menna, supra,* 11 Cal.4th at p. 984) "'The amount of evidence of rehabilitation required to justify admission varies according to the seriousness of the misconduct at issue.'" (*Id.* at p. 987, quoting *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1086 (dis. opn. of Lucus, C. J.).)

## Applicant's Prima Facie Showing of Good Moral Character

### General Background

Applicant was born in Tehran, Iran, in 1970 and came to the United States in 1972. Applicant returned to Iran in 1976, and returned to the United States with his family in 1979, when he was eight years old. Applicant and his family settled in Dallas, Texas.

During his high school years, Applicant felt not welcomed by other students due to the Iranian hostage crisis. Some students ridiculed him and he found it a difficult time. Despite these tensions, Applicant excelled academically.

Applicant entered the University of Wisconsin/Madison as a 16-year-old freshman. He felt insecure and attempted to act older than he was. Applicant joined a fraternity and became overly social, neglecting his academics. The consumption of alcohol played a part in his socializing. In January 1990, Applicant was no longer enrolled at school due to his poor grades.

During this time, his parents separated and eventually divorced. His parent's divorce devastated Applicant and he blamed himself for their parting. Applicant now felt responsible for his mother and sister and decided he needed to clean up his act and return to school.

Applicant attended a local junior college in Texas and worked full-time. He focused on his academics and received good grades. He was again accepted to the University of Wisconsin/Madison and graduated in 1991. During his time at college, Applicant worked out his issues with his parents.

Applicant attended the University of Dayton Law School in Ohio and graduated in 1995. He passed the bar examination, and was admitted to the practice of law in Texas in May 1995. Applicant subsequently earned an advanced law degree in taxation from the University of Denver School of Law in Colorado.

Applicant practiced law in Texas and, for a short period in 1999, lived in the Philippines. While in the Philippines and upon his return to Texas, Applicant worked in the healthcare field, working for companies and starting companies that managed hospitals and related facilities. Applicant later specialized in tax matters.

In 2007, Applicant co-founded Enterhealth, an online program to help people deal with their addictions anonymously. Applicant also planned and helped develop a residential treatment center to treat addiction using the most modern techniques and methods. Applicant worked with Enterhealth until September 2008, and sold a majority of his shares in May 2010. Applicant considers himself to be a "hands-free" minority owner.

**Applicant's Good Character Testimony**

Applicant presented the impressive testimony of 13 character witnesses. Five of the witnesses are attorneys. All the witnesses testified favorably concerning Applicant's good moral character and his honesty, truthfulness, ethics, generosity, and integrity. The witnesses were aware of the facts constituting the Committee's opposition to Applicant's admission to practice law in California. Although aware of the Committee's opposition, the witnesses continued to support Applicant's admission to the State Bar of California.

**Finding on Applicant's Prima Facie Showing**

The court finds that based on his general background and the testimony of his character witnesses, applicant presented a prima facie showing of good moral character.

**Committee's Rebuttal Case**

**Applicant's Application for Moral Character Determination**

As previously noted, Applicant submitted his application to the Committee on April 28, 2011. Applicant prepared and signed the application. Applicant was aided by a California attorney in the preparation of his application.

In the application, Applicant acknowledged the following:

> "I have read the questions in the foregoing application and have answered them truthfully, fully and completely, without mental reservations of any kind. I fully understand that failure to make a full disclosure of any fact or information called for may result in the denial of my application and receipt of an adverse moral character determination."

In the portion of his application listing his previous employment, Applicant listed a number of companies that he incorporated and listed himself as either secretary, president, director, member, owner, chairman of the board, or founder. Some of the companies were incorporated but no business was ever transacted, some companies were incorporated by Applicant acting as promoter, some companies actually transacted business and were profitable, and some companies transacted business and were not profitable.

Of special note in his application, Applicant listed employment as general manager with Sun-Tzu Management, Inc., from January 1998 to September 1999. Applicant indicated that the reason for leaving employment with Sun-Tzu was "Health." This answer was not correct.

Applicant testified that he was stripped of his powers at Sun-Tzu in March 1999, due to management philosophy differences with the company's shareholders. In September 1999, Applicant was then fired from his position as general manager with Sun-Tzu. Applicant noted that the stress and difficulty associated with the stripping of his general manager powers, led to physical manifestations, including his collapsing while on the job. Applicant's health problems coincided with his termination.

In his application, under the section for professional discipline, Applicant wrote that, among other things, his first Texas discipline was based on his missing "a court date." The Applicant missed not just a court date, but his client's trial date. Applicant also listed the State Bar of Texas as the agency in possession of the records in the matter, but failed to list the agency's address as requested. The court notes the mailing address for the State Bar of Texas is

listed elsewhere in the application. Also, in an attachment to the application, it is noted that Applicant missed a client's trial date.

In his application, under the section for professional discipline, Applicant wrote "No Misconduct" in response to a question regarding the final disposition of his second Texas disciplinary matter. The final disposition of Applicant's second Texas disciplinary matter resulted in a five-year fully probated sanction. Applicant testified that he made a mistake when he wrote "No Misconduct." The court notes that elsewhere in his application, it is noted that Applicant received a five-year fully probated sanction in his second Texas discipline matter.

In all, Applicant was required to amend his application on six occasions to supply additional information to the Committee. In addition, Applicant admits that his application was sloppily prepared, containing mistakes and cross-overs. The court agrees and can best describe the application as below the level of professional presentation.

At trial in this matter, the Committee was unable to produce the original, intact, application or a copy thereof. Although much of the application was introduced into evidence, the Committee could not explain why the original, intact application (or a copy thereof) was not produced at trial.

To make matters even more confusing, documents were attached to pages of the application in certain Committee exhibits that were not part of the original. The exhibits were marked as part of Applicant's application, but they were not. The Committee offered no explanation of when those documents were received by the Committee and who attached those documents to the original application. The court is aware that the Committee requested that Applicant provide numerous updates to his application due to his inadequate preparation of the document. Nevertheless, the Committee has the burden to produce evidence that Applicant made material omissions from or supplied incorrect information in his application. And it is next

to impossible to determine which documents were filed with the original application and which documents were later submitted by Applicant at the request of the Committee.

That being said, the court finds, as previously noted, that Applicant did furnish incorrect information in his application regarding the reason for leaving his employment with Sun-Tzu in 1999. While Applicant's health was a factor, he acknowledged that he remained at Sun-Tzu until he was terminated.

**Applicant's Texas State Bar Association Disciplinary History**

**First Imposition of Discipline**

On January 2, 1998, Applicant was disciplined by the Texas Bar Association. Applicant received a private reprimand for failure to perform with competence in a single client matter. In this matter, Applicant failed to appear at a hearing date on behalf of a client.[2]

**Second Imposition of Discipline**

On May 16, 2001, Applicant was again disciplined by the Texas Bar Association. Applicant received a "fully probated" 5-year suspension for failing to respond to an inquiry of the Texas State Bar, violating a disciplinary order, failing to respond to the Texas State Bar, and failing to complete a professional enhancement program as ordered as a condition of his 1998 private reprimand.

This discipline was related to Applicant's move to the Philippines in 1999. Upon moving, he failed to notify his two clients and the Texas State Bar. Applicant believed his law partner would complete both cases, but was mistaken. Applicant takes full responsibility for his conduct.

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[2] The record does not contain certified full copies of Applicant's prior record in the state of Texas. According to a declaration from an employee of the Texas Board of Law Examiners, Applicant's records were destroyed pursuant to the Texas Board of Law Examiners' five-year records retention policy.

Applicant testified that the misconduct leading to both of his Texas disciplines occurred when he was a young man and just starting in the practice of law. Applicant's law mentor had suddenly passed away just as Applicant was learning how to operate a law practice. Applicant has not been disciplined in any jurisdiction since 2001, and credits his personal growth and maturity for his turnaround.

**Applicant's Criminal Conviction History**

**Citation for Non-Sufficient Funds Check**

Sometime in 1994 or 1995, Applicant cashed a check at an Albertsons grocery store in Texas. At the time he cashed the check, Applicant believed that his checking account contained the required funds to honor the check. Applicant had opened another checking account at a different bank shortly before cashing the check at Albertsons.

Applicant had listed his mother's address as his mailing address when he opened the first checking account. At the time he cashed the check at Albertsons, Applicant was not residing at his mother's residence. Albertsons sent correspondence to Applicant posted to his mother's address. Applicant did not immediately receive Albertsons's letter. Once he became aware of Albertsons's claim of a non-sufficient funds check, Applicant went to the grocery store and paid the $20 and any fees associated with the dishonored check. Applicant was informed that Albertsons had referred the matter to the local municipal court. Applicant went to the courthouse and spoke with a court clerk. Applicant provided proof of payment to Albertsons and entered a guilty plea on the citation. The court imposed a $50 fine, which Applicant immediately paid.

**First Driving Under the Influence of Alcohol Conviction**

On March 28, 2001, Applicant was convicted of driving while intoxicated in the state of Texas. This conviction was based on his October 14, 2000 arrest for driving under the influence

and misdemeanor assault.[3] Applicant was sentenced to 120 days probation, with 24-months of community supervision and a fine. In April 2003, Applicant completed all terms and conditions imposed by the court.

**Second Driving Under the Influence of Alcohol Conviction**

On August 31, 2009, Applicant was convicted of driving while intoxicated in the state of Colorado. This conviction was based on Applicant's October 9, 2008 arrest for driving while impaired. Applicant was sentenced to 15 months supervised probation subject to terms and conditions, 30 days home detention, community service, and a fine.

As part of his sentence, the court ordered Applicant into privately-retained therapy. The therapy sessions started with Applicant's alcohol problem but then went deeper, involving self-esteem issues that Applicant had repressed since childhood. Applicant described the therapy as taking 800 pounds off of him and that it was as if a light bulb went off inside of him. As a result of his therapy, Applicant described being finally able to love himself, to take responsibility for his decisions, to not be co-dependent on others, and to stand-up for himself. Applicant described the therapy as the best thing that ever happened to him.

In August 2010, Applicant completed all of the terms and conditions imposed by the court. Applicant testified that he doesn't drink much anymore – perhaps a glass of wine on special occasions or a beer when watching a football game – and he does not drink and drive.

At trial, Applicant presented a letter from John Talmadge, M.D. (Dr. Talmadge), an American Board of Psychiatry and Neurology Diplomate and Clinical Professor of Psychiatry at the University of Texas Southwestern Medical Center. Dr. Talmadge has extensive experience

[3] The assault charge stemmed from an incident involving Applicant and security personnel at a bar earlier that evening. The assault charge was not filed by the prosecutor.

in the psychiatric assessment of professionals and executives, including attorneys participating in the Texas Lawyer Assistance Program.

Dr. Talmadge evaluated Applicant after an extensive interview and assessment. In Dr. Talmadge's expert opinion, he finds that Applicant does not have a present problem related to alcohol, drugs, addictive chemicals, or substance abuse of any kind. Dr. Talmadge also opines that Applicant did not in the past suffer from clinically significant problems related to alcohol or other substances. Dr. Talmadge is confident that Applicant has a very low risk of future addiction related issues.

**Cedars Hospital and Federal Tax Liens**

In March 1999, Cedars Hospital in Dallas, Texas, was sold. The land and building were sold to the Johnson Family Trust. The Johnson Family Trust was established by a loan from Evangeline Johnson (Evangeline). The actual business and license to operate the hospital was purchased by Pars Translation, Inc. (Pars) by the assumption of certain debt and obligations.

Pars was a company formed by Applicant in 1997. The management and control of the hospital was by Evangeline, who hired David Cudmore (Cudmore) to manage the hospital and Don Johnson (Johnson) to manage patient care. Applicant testified that he was not involved with the operation of the hospital and there was no contrary evidence in the record.

On April 18, 1999, Applicant married Evangeline and, in September 1999, they moved to the Philippines. Sometime in 2000, Evangeline informed Applicant that the hospital was not doing well and needed to be sold. This information surprised Applicant. Applicant was informed that Cudmore had located a buyer for the hospital. Applicant returned to Texas to determine what was happening at the hospital.

Upon his return, Applicant met with Cudmore and was informed that the hospital was millions of dollars in debt, was in arrears for over a million dollars to the Internal Revenue

Service (IRS), and had no insurance coverage. During the meeting, Cudmore handed the keys to the hospital to Applicant and resigned his position with the hospital. Cudmore also told Applicant that the IRS would be closing the hospital in approximately two weeks.

Applicant approached Johnson and solicited his support in an attempt to save the hospital from being closed. Johnson agreed to Applicant's offer.

Unfortunately, during this time period, Evangeline and Applicant were experiencing marital problems, partly based on Applicant's decision to return to Texas. Applicant also became aware of a default judgment taken against Evangeline by her former business partners. Applicant informed Evangeline of the default judgment and she returned to Texas from the Philippines. Shortly after her return, Evangeline retained counsel and filed for bankruptcy protection. The bankruptcy court appointed Scott Seidel (Seidel) as the bankruptcy trustee. Following the filing of Evangeline's bankruptcy petition, all events related to Pars and the hospital were monitored by Seidel.

Sometime after her return from the Philippines, Applicant filed for dissolution of his marriage to Evangeline.

From 2000 to 2002, Applicant was the general manager of Cedars Hospital and most of his financial decisions were monitored by Seidel. When Applicant took over control of the hospital, its financial future was bleak. Costs exceeded income. Consistent cash flow was also a problem. To keep the hospital open and be able to pay its employees and contractors, the hospital administrators, including Applicant, made certain business decisions that resulted in Applicant falling further behind in his IRS withholding tax obligations.

Applicant was able to obtain funding to purchase the hospital and approval of the sale by Seidel. On June 5, 2002, the bankruptcy court entered an order granting the trustee's motion to compromise and sell Cedars Hospital to Applicant and Interhealth, Inc. (Interhealth).[4]

On June 11, 2002, the bankruptcy court entered an order regarding the sale of claims. Interhealth purchased the land, the building, and the license. Although Applicant was already responsible for any IRS tax lien, under the terms of the agreement, Applicant would forego any legal challenges to the lien.

On October 13, 2004, the IRS filed a federal tax lien in the amount of $841,288.85 in unpaid withholding taxes. Applicant/Interhealth retained outside counsel to assist with the IRS problems.

In 2003, Cedars Hospital received a Medicaid payment in the amount of approximately one million dollars. Medicaid became aware of the IRS tax lien against Applicant/Interhealth and, without the hospital's knowledge, had the funds withdrawn from the hospital's accounts to pay the IRS lien. Medicaid's action caused a one million dollar deficit in the hospital's operating budget. This caused Applicant/Interhealth to fall behind in payments to creditors, including IRS withholding taxes.

Applicant/Interhealth instituted administrative and procedural changes in the operation of the hospital, i.e., adding additional beds and reserving a certain number of beds for drug research testing. Applicant's efforts increased cash flow and, over time, returned the hospital to a profitable status.

On May 16, 2006, the IRS filed a federal tax lien in the amount of $632,600.50 for unpaid withholding taxes against Applicant/Interhealth. Attorneys for Applicant/Interhealth

[4] Interhealth was a company formed by Applicant and of which he was company president.

negotiated with IRS officials and Applicant/Interhealth agreed to pay $30,000 per month to the IRS.

In 2006, Applicant/Interhealth sold Cedars Hospital. On January 31, 2007, the IRS released the liens it had filed against Applicant/Interhealth. Applicant satisfied all liens in full and paid statutory penalties.

The Committee argues that Applicant/Interhealth was making a profit beginning in 2004, and should have paid the IRS lien much earlier than January 2007. However, the Committee failed to produce any evidence of the amount of the profits Applicant/Interhealth made beginning in 2004. Furthermore, the Committee conceded in its closing argument that Applicant's turning around Cedar Hospital was a great achievement and a feather in his cap. The court agrees.

**Committee's Allegation that Applicant Committed Unauthorized Practice of Law**

Jeff Wise (Wise) is an attorney licensed to practice law in the state of Oklahoma. Wise is also married to Applicant's sister. Wise testified at trial in this matter as a good character witness on behalf Applicant.

During his testimony, Wise stated that Applicant had recently helped him with an Oklahoma case Wise was handling concerning a broken coffee maker that caused injury to his client. Wise testified that Applicant may have: sent a letter to the opposing party's insurance carrier; deposited a settlement check in Applicant's client trust account; and disbursed settlement funds to the client in the case. Applicant has never been admitted to the practice of law in Oklahoma, and did not receive a fee for assisting Wise in the case.

Applicant testified that his sister was his paralegal but became Wise's paralegal in Oklahoma after she married Wise. Applicant offered Wise and his sister advice on the case.

Applicant cannot recall the client's name or if he ever sent the client a letter, the name of the insurance carrier or if he sent correspondence to the insurance company on his letterhead on

behalf of the client, or if he received and disbursed settlement funds in the case. Applicant also does not recall the jurisdiction of the case, whether state or federal. Applicant, however, does recall offering his opinion to Wise on how to handle the case and what it was worth.

Citing rule 5.5 of the Oklahoma Rules of Professional Conduct, the Committee argued that Applicant committed the unauthorized practice of law when he assisted Wise in the Oklahoma case. However, the evidence before the court regarding Applicant's actual level of involvement in the Oklahoma case remains less than clear.

Regardless, even if the court were to find that Applicant's conduct constituted the practice of law in Oklahoma, rule 5.5 contains a critical exception. Rule 5.5(c)(1) permits a lawyer admitted in a United States jurisdiction to provide legal services in Oklahoma on a temporary basis in association with a lawyer who is admitted to practice in Oklahoma and who is actively participating in the matter. At most, Applicant's conduct in the Oklahoma case appears to fall within this exception.

**Applicant's Rehabilitation Case**

Applicant has been discipline free since his two prior discipline matters in Texas, the last discipline occurring 13 years ago – in 2001 – and based on misconduct occurring in 1998 and 1999. Applicant credits his personal growth and maturity as the reasons for his turnaround.

Applicant's prior arrest and conviction record includes a misdemeanor conviction for passing a $20 check at a grocery store in 1994 or 1995. When Applicant was made aware that the check was returned for non-sufficient funds, he immediately paid the grocery store and paid the court fee.

Applicant has two convictions for driving under the influence, one conviction in 2001 and the other in 2009. While the court acknowledges that Applicant's last conviction for driving under the influence occurred only five years ago, his subsequent court-ordered therapy sessions

played a significant role in helping him change his life, both in regard to his prior attorney discipline misconduct and his problems with alcohol. Applicant also produced credible evidence from a medical expert that he currently does not have a problem with alcohol.

The court also notes that Applicant did not take sufficient time and care in the preparation of his application. Although Applicant's application was sloppily prepared and appeared less than a professional presentation, penmanship is not a factor in determining whether an applicant possesses the requisite moral character to be admitted to the State Bar of California.

In the application, the court had some concern regarding Applicant's mischaracterization of his termination from Sun-Tzu in 1999, however, the court's concerns were somewhat alleviated by Applicant's explanation and candid testimony on this subject.

The court was at first troubled by the IRS tax liens filed against Applicant while managing Cedars Hospital. However, the court can find no acts of intentional misconduct in his failure to promptly pay the tax liens. Applicant/Interhealth was faced with two options: pay the liens and close the hospital or not pay the liens and keep the hospital open. As the Committee concedes, Applicant's keeping the hospital open was a great achievement. Moreover, Applicant/Interhealth did not ignore the IRS tax lien. Attorneys for Applicant/Interhealth negotiated an agreement with the IRS to pay $30,000 per month to the IRS during the pendency of the tax liens. Eventually, when Applicant/Interhealth sold Cedar Hospital, the entire IRS tax lien was paid with no discount.

## Conclusion

The risk of Applicant repeating his misconduct is remote. There is credible evidence that Applicant's problems with alcohol are in the past. The court is convinced that Applicant has learned from his past discretions and understands and respects the ethical duties required of an attorney. Accordingly, the court finds that applicant **Roger Arash Farahmand** has established

that he currently possesses the good moral character required for admission to the practice of law in the State of California (Bus. & Prof. Code, § 6060, subd. (b); Rules Regulating Admission to Practice Law, rule X).

Dated: February 3, 2014

RICHARD A. PLATEL
Judge of the State Bar Court

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on February 4, 2014, I deposited a true copy of the following document(s):

DECISION

in a sealed envelope for collection and mailing on that date as follows:

☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MICHAEL GALEN GERNER
MICHAEL G GERNER, A PROF LAW CORP
425 S BEVERLY DR STE 210
BEVERLY HILLS, CA 90212

☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

ANTHONY GARCIA, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 4, 2014.

Angela Carpenter
Case Administrator
State Bar Court